

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

AMBER JEAN MALLORY,

Plaintiff,

v.

WASHINGTON DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES, et
al.,

Defendants.

Case No. 3:24-cv-05135-BHS

ORDER TO SHOW CAUSE OR
AMEND THE COMPLAINT

This matter comes before the Court on plaintiff's motion to proceed *in forma pauperis* in regard to her proposed complaint. Dkt. 6. Plaintiff is unrepresented in this matter. Having reviewed and screened plaintiff's proposed complaint under 28 U.S.C. §1915A, the Court declines to serve the proposed complaint but provides plaintiff leave to file an amended complaint by May 28, 2024 to cure the deficiencies identified by this order.

BACKGROUND

Plaintiff names 15 (possibly 16) defendants in her complaint. Dkt. 6-1 at 2-4. Plaintiff names the Washington State Department of Children Youth and Families ("DCYF") in the caption of her complaint but not in the body of the complaint. She names DCYF employees Katie Davis, Shawn Guren, Annie Lovato, Rachelle St. Peter,

1 Angela Hopkins, Jenna Heil, and Jorge Soto Larios (Collectively “DCYF defendants”).¹
2 *Id.* at 2. She indicates that her claims are brought against these employees in their
3 individual and their official capacities. *Id.* She names several facilities that she states
4 are contracted with DCYF including Reliable Enterprises, and Cedarbrook Early
5 Learning Center. *Id.* She also names two individuals, Andy Schmucker and Anita
6 Schmucker, who she states are employed by a foster home that is contracted by DCYF.
7 *Id.* at 3. She names “Alternative Counseling Services.” *Id.* at 4. She also names the
8 following three individuals: Adam Thomas, Lani Peterson, and Devlin Dudley. *Id.*

9 Plaintiff states that her claims are brought pursuant to the right to due process
10 under the Fifth and Fourteenth Amendments, the Right to Privacy under the Ninth
11 Amendment, and the Right to be Treated Fairly and Just Including Equal Protection
12 under the Fourteenth Amendment. Dkt. 6-1 at 5.

13 Plaintiff states that on February 17, 2021 Katie Davis removed her children under
14 Shawn Guren’s direction. Dkt. *Id.* at 6. She states that Annie Lovato, Jenna Heil, Jose
15 Santos Larios, and Rachelle St. Peter continued to violate the rights of her and her
16 children. *Id.*

17 Plaintiff states that DCYF solicited testimony from her neighbors, Lani Peterson
18 and Devlin Dudley as basis for removal. Dkt. 6-1 at 6. Plaintiff also states that DCYF
19 violated the due process rights of herself and her children by placing her children with
20 Andy Schmucker and Anita Schmucker. *Id.*

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23 ¹ Plaintiff also names “Jose Santos Larios” in the body of the complaint. Dkt. 6-1 at 6. It is unclear if this is
24 a different person or if it is a mistake.

1 Plaintiff states that Annie Lovato and Jenna Heil fabricated claims against her to
2 continue to violate the rights of herself and her children by fabricating claims of “child
3 abduction, bomb making and other outlandish claims unsupported by facts.” Dkt. 6-1 at
4 6.

5 Plaintiff further alleges that Reliable Enterprises caused harm to her due process
6 rights and that the agency “sent its worker to my home to offer my drugs, alcohol, and
7 solicit me for unlawful request for legal advice.” Dkt. 6-1 at 7. She states that the agency
8 neglected her children in various ways. *Id.*

9 Plaintiff states that Cedar Brook Early Learning Center neglected her children
10 and used NARCAN on her son without consent. Dkt. 6-1 at 7.

11 Plaintiff states that Alternative Counseling and Annie Lovato released her
12 personal medical information in violation of HIPAA laws. *Id.* at 7.

13 Plaintiff additionally alleges that she has been “gang stalked” by the Jefferson
14 County Sheriff’s Office because Jamie Heil and Annie Lovato and other employees
15 have solicited it. Dkt. 6-1 at 8.

16 Plaintiff states that Adam Thomas conducted a background check at the State’s
17 direction and the State continues to use him to violate her due process. *Id.* at 8.

18 She states that Katie Davis used improper removal of her children to be placed
19 with the Schmucker’s who then recommended that her granddaughter be placed with
20 Ms. Davis. Dkt. 6-1 at 8-9.

21 Plaintiff is seeking monetary damages. Dkt. 6-1 at 9.

22 DISCUSSION

23 1. Standard

1 The district court may permit indigent litigants to proceed IFP upon completion of
2 a proper affidavit of indigency. See 28 U.S.C. §1915(a). However, the court has broad
3 discretion in denying an application to proceed IFP. *Weller v. Dickson*, 314 F.2d 598
4 (9th Cir. 1963), *cert. denied* 375 U.S. 845 (1963).

5 The Court must review and screen complaints, and order the *sua sponte*
6 dismissal of any case that is “frivolous or malicious,” “fails to state a claim on which
7 relief may be granted,” or “seeks monetary relief against a defendant who is immune
8 from such relief.” 28 U.S.C. § 1915(e)(2)(B); *see also Calhoun v. Stahl*, 254 F.3d 845,
9 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to
10 prisoners.”); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting
11 that 28 U.S.C. § 1915(e) “not only permits but requires” the court to *sua sponte* dismiss
12 an IFP complaint that fails to state a claim). An IFP complaint is frivolous if “it ha[s] no
13 arguable substance in law or fact.” *Tripathi v. First Nat’l Bank & Trust*, 821 F.2d 1368,
14 1369 (9th Cir. 1987) (citing *Rizzo v. Dawson*, 778 F.2d 527, 529 (9th Cir. 1985); *see*
15 *also Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984).

16 A *pro se* plaintiff’s complaint is to be construed liberally, but like any other
17 complaint it must nevertheless contain factual assertions sufficient to support a facially
18 plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009) (citing *Bell Atlantic*
19 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim for relief is facially plausible when
20 “the plaintiff pleads factual content that allows the court to draw the reasonable
21 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at
22 678.

23 2. Section 1983

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1 To state a claim under 42 U.S.C. § 1983, a complaint must allege: (1) the
2 conduct complained of was committed by a person acting under color of state law, and
3 (2) the conduct deprived a person of a right, privilege, or immunity secured by the
4 Constitution or laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981),
5 *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327 (1986). To satisfy the
6 second prong, a plaintiff must allege facts showing how individually named defendants
7 caused, or personally participated in causing the harm alleged in the complaint. See
8 *Arnold v. Int'l Bus. Machines Corp.*, 637 F.2d 1350, 1355 (9th Cir. 1981).

9 3. Improper Defendants

10 i. Private Parties

11 Generally, private parties do not act under color of state law and they are
12 therefore not liable under § 1983. *Price v. Hawaii*, 939 F.2d 702, 707-08 (9th Cir. 1991).
13 To determine whether a private actor acts under color of state law for § 1983 purposes,
14 the Court looks to whether the conduct causing the alleged deprivation of federal rights
15 is “fairly attributable” to the state. *Price*, 939 F.2d at 707-08. Conduct may be fairly
16 attributable to the state where (1) it results from a governmental policy and (2) the
17 defendant is someone who fairly may be said to be a governmental actor. *Sutton v.*
18 *Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835 (9th Cir. 1999). A private actor may
19 be considered a governmental actor if the private actor conspires with a state actor or is
20 jointly engaged with a state actor when undertaking a prohibited action. *Tower v.*
21 *Glover*, 467 U.S. 914, 920 (1984).

22 Plaintiff has stated no facts regarding Adam Thomas, Lani Peterson, and Devlin
23 Dudley that suggest that they fairly may be said to be government actors. Plaintiff states
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1 only that Lani Peterson and Devlin Dudley were her neighbors who provided testimony
2 “as a basis for removal.” Dkt. 6-1 at 6. She states that the “State utilized Adam Thomas
3 as a resource without my knowledge background check for use of separating my
4 family.” *Id.* at 8. These conclusory allegations are insufficient to support a claim that
5 these private actors conspired with or acted jointly with a state actor to deprive plaintiff
6 of her constitutional rights.

7 Plaintiff has also not pled any facts to suggest that Anita and Andy Schmucker
8 may fairly be said to be government actors. Plaintiff states that her children were placed
9 in the Schmucker’s care. Dkt. 6-1 at 6. However, this is not sufficient for the purposes of
10 section 1983. *See Mabe v. San Bernadino Cnty., Dep’t of Pub. Soc. Servs.*, 237 F.3d
11 1101, 1109 n.3 (9th Cir. 2001) (affirming dismissal of court-appointed caretakers
12 because there is no evidence that they were acting under the color of state law).

13 ii. DCYF Defendants

14 First, to the extent plaintiff names DCYF and the DCYF employees in their official
15 capacities, such claims would be barred under the Eleventh Amendment. *See Will v.*
16 *Michigan Dep’t of State Police*, 491 U.S. 58, 70-71 (1989) (the State and its agencies
17 are not subject to § 1983 claims because they are not “person[s]” within the meaning of
18 that section and are entitled to immunity under the Eleventh Amendment; official
19 capacity suit against state employee is really a suit against the official's office, and no
20 different than a suit against the state).

21 Second, those employees are likely entitled to immunity in their personal
22 capacities. *See, e.g., Tamas v. DSHS*, 630 F.3d 833, 841-42 (9th Cir. 2010) (State
23 officials entitled to absolute immunity for their performance of quasi-prosecutorial and
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quasi-judicial functions); *Meyers v. Contra Costa County Dep't of Social Servs.*, 812 F.2d 1154, 1157 (9th Cir. 1997) (“social workers are entitled to absolute immunity in performing quasi-prosecutorial functions connected with the initiation and pursuit of child dependency proceedings”); *Doe v. Louisiana*, 2 F.3d 1412, 1415-18 (5th Cir. 1993) (caseworkers performing discretionary, non-prosecutorial functions are entitled to qualified immunity in the face of a § 1983 claim).

Additionally, it is not clear plaintiff alleges facts showing how all individually-named defendants caused or personally participated in causing the harm alleged in the complaint, *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981), and she may seek to improperly include some supervisory personnel as liable for actions of subordinates under a theory of vicarious liability. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989); see also *Snow v. McDaniel*, 681 F.3d 978, 989 (9th Cir. 2012) (“A supervisor may be liable only if (1) he or she is personally involved in the constitutional deprivation, or (2) there is ‘a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation.’”) (quoting *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989)).

Plaintiff’s only allegation against Rachelle St. Peter and Jose Santos Larios is that they “continued to violate mine and my children’s rights.” Dkt. 6-1 at 6. Additionally, her only claim against Shawn Guren is that Katie Davis was acting under their authority. *Id.*

4. Rule 8

A complaint must contain “a short and plain statement of the claim showing that the [plaintiff] is entitled to relief.” Fed. R. Civ. P. 8(a). Plaintiff must allege a plausible set

1 of facts that would show they are entitled to any relief. Mere conclusory statements in a
2 complaint and “formulaic recitation[s] of the elements of a cause of action” are not
3 sufficient. *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009); *Chavez v. United States*, 683
4 F.3d 1102, 1108-09 (9th Cir. 2012). “Dismissal can be based on the lack of a cognizable
5 legal theory or the absence of sufficient facts alleged under a cognizable legal theory.”
6 *Ballistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).

7 Here, plaintiff has not provided sufficient facts to support a claim for relief and
8 has not explained the cognizable legal theory behind her allegations. Plaintiff’s claims
9 are largely conclusory and fail to assert facts regarding the acts or omissions of each
10 defendant, or how any acts or omissions caused a violation of federal law. *Ashcroft v.*
11 *Iqbal*, 556 U.S. 662, 678, (2009). Plaintiff also states at one point that DCYF’s actions
12 were in violation of ICWA 25 U.S. Chapter 21 but does not otherwise provide any other
13 information regarding this claim.

14 To comply with Rule 8(a), plaintiff must write out short, plain statements telling
15 the Court: (1) the constitutional right plaintiff believes was violated; (2) the name of the
16 person who violated the right; (3) exactly what that person did or failed to do; (4) how
17 the action or inaction of that person is connected to the violation of plaintiff’s
18 constitutional rights; and (5) what specific injury plaintiff suffered because of that
19 person’s conduct. See *Rizzo v. Goode*, 423 U.S. 362, 371-72 (1976). This information
20 must be provided for each defendant in each claim. If plaintiff fails to affirmatively link
21 the conduct of each named defendant with the specific deprivation of a federal
22 constitutional or statutory right suffered by plaintiff, the claim may be dismissed by the
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1 Court. Conclusory allegations that a defendant or a group of defendants have violated a
2 constitutional right are not acceptable and will be dismissed.

3 5. Leave to Amend

4 Unless it is absolutely clear that no amendment can cure the defects of a
5 complaint, a *pro se* litigant is entitled to notice of the complaint's deficiencies and an
6 opportunity to amend prior to dismissal of the action. *See Lucas v. Dep't of Corr.*, 66
7 F.3d 245, 248 (9th Cir.1995). Leave to amend need not be granted "where the
8 amendment would be futile or where the amended complaint would be subject to
9 dismissal." *Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991).

10 The Court concludes that leave to amend would not be futile in this case.
11 Therefore, plaintiff will have an opportunity to file an amended complaint in compliance
12 with this Order.

13 CONCLUSION

14 Due to the deficiencies described above, it appears that plaintiff's complaint is
15 subject to dismissal. Plaintiff may show cause why the complaint should not be
16 dismissed or may file a proposed amended complaint to cure, if possible, the
17 deficiencies noted herein, on or before **May 30, 2024**.

18 If an amended complaint is filed, it must be legibly written or retyped in its entirety
19 and contain the same case number. Any cause of action alleged in the original
20 complaint that is not alleged in the amended complaint is waived. *Forsyth v. Humana,*
21 *Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *overruled in part on other grounds, Lacey v.*
22 *Maricopa Cnty.*, 693 F.3d 896 (9th Cir. 2012).

1 The Court will screen the amended complaint to determine whether it states a
2 claim. If the amended complaint is not timely filed or fails to adequately address the
3 issues raised herein, the undersigned will recommend dismissal of this action as
4 frivolous under 28 U.S.C. § 1915.

5 The Clerk is directed to send plaintiff the appropriate forms for filing a copy of this
6 Order and the *Pro Se* information sheet. **Additionally, the Clerk is directed to re-note**
7 **plaintiff's IFP application for May 28, 2024.**

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10 Dated this 2nd day of May, 2024.

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Theresa L. Fricke
14 United States Magistrate Judge
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